

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ERIC LEVY-ABEGNOLI and PASCAL THUBERT

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Appeal 2007-0351  
Application 09/963,737  
Technology Center 2100

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Decided: March 9, 2007

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Before JAMES D. THOMAS, KENNETH W. HAIRSTON, and JEAN R. HOMERE, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 21 to 32. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants have invented a method and apparatus for load balancing connections between a plurality of servers and a plurality of clients. In

response to receipt of a communication from at least one of the plurality of clients, the method and system determine a primary load balancer and a backup load balancer for handling the communication, and store an identity of the primary load balancer and the backup load balancer corresponding to the communication in each of the plurality of load balancers. If the primary load balancer is not available when the communication is forwarded to the primary load balancer, then the communication is forwarded to the predetermined backup load balancer. The communication is then forwarded by the backup load balancer to at least one of the plurality of servers.

Claim 21 is representative of the claims on appeal, and it reads as follows:

21. A method of load balancing connections between a plurality of servers and a plurality of clients, wherein a plurality of load balancers couple said plurality of servers and said plurality of clients, said method comprising:

in response to a receiving load balancer out of said plurality of load balancers receiving a communication from at least one of said plurality of clients, determining a primary load balancer and a backup load balancer for handling said communication;

storing an identity of said primary load balancer and said backup load balancer corresponding to said communication in each of said plurality of load balancers;

forwarding said communication to said primary load balancer for transmission to at least one of said plurality of servers; and

in response to determining said primary load balancer is not available, forwarding said communication to said determined backup load balancer for transmission to at least one of said plurality of servers.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Adelman                                      US 6,078,957                                      Jun. 20, 2000

The Examiner rejected claims 21 to 32 under 35 U.S.C. § 102(e) based upon the teachings of Adelman.

Appellants contend that Adelman does not teach determining a primary load balancer and a backup load balancer in response to the receipt of a communication, and does not teach storing an identity of the primary load balancer and the backup load balancer in each of the plurality of load balancers for that communication. (Br. 5 and 6).

We reverse.

#### ISSUE

Does Adelman describe a method and system in which a primary load balancer and a backup load balancer are selected to handle a communication, and a method and system in which the identities of the two noted load balancers are stored in each of the plurality of load balancers?

#### FINDINGS OF FACT

Appellants describe a system and method that designates a primary load balancer and a backup load balancer to handle a communication from a client. The identities of the two load balancers are stored in all of the load balancers in the system. If the primary load balancer is not available to handle the communication, then the backup load balancer acts to transmit the communication to at least one of a plurality of servers.

Adelman describes a method and apparatus for TCP/IP load balancing in an Internet Protocol (IP) network clustering system (Fig. 6, col. 1, ll. 15 to 19). The method and apparatus in Adelman operates with a single master of

a cluster of members. A backup to the single master is never selected. Instead of a backup to the master, Adelman describes a technique whereby a member of the cluster competes for the position of master of the cluster when the original master stops or is not properly operating as a master (col. 6, l. 40 to col. 7, l. 41).

#### PRINCIPLE OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

#### ANALYSIS

If Adelman never selects a backup to the master, then the method and system described by Adelman is incapable of storing the identities of both a master and a backup in all of the members of the cluster, and is incapable of forwarding a communication from the master to a backup as set forth in the claims on appeal.

#### CONCLUSION OF LAW

Anticipation has not been established by the Examiner because Adelman fails to appoint a backup to the master.

#### DECISION

The anticipation rejection of claims 21 to 32 is reversed.

Appeal 2007-0351  
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REVERSED

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ELD

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